

EMPLOYER STATUS DETERMINATION
Port Railroads, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Port Railroads, Inc. (PRI), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

Information regarding PRI was provided by Fred L. Krebs, General Manager of San Joaquin Valley Railroad Company. According to Mr. Krebs, PRI is responsible for operating trackage which is leased from Southern Pacific Transportation Company. Mr. Krebs also advised that PRI has no employees and all services are performed by San Joaquin Valley Railroad Company, which reports the creditable compensation of the employees involved (B.A. Number 3780).

In Interstate Commerce Commission Finance Docket 32457, PRI filed a notice of exemption to lease and operate approximately 107 miles of rail line in California owned by Southern Pacific, providing services to former customers of Southern Pacific. As mentioned above, PRI has no employees or equipment and contracts with the San Joaquin Valley Railroad Company to provide service.

In cases such as this where an entity has authority to operate a rail line, but does not actually operate the line in question, the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the ICC certified carrier to determine the status of the certified carrier under the RRA and RUIA. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC as the operator of the line in question, that entity will be found to be a covered employer with respect to the operation of the line it has undertaken. If the certified entity has no involvement in the actual operation of the rail line, the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. However, if the operating entity is neither a covered employer nor an entity that has been recognized by the ICC as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

PRI has no employees and operations are conducted by the employees of another railroad carrier, which is an employer under the Acts. That employer reports the employee service rendered to PRI to the Board. Consistent with above-described analysis of cases such as this, a majority of the Board finds that Port

Railroads, Inc. is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

Port Railroads, Inc.

Port Railroads, Inc. is reminded to inform the Board of any change in the operation of the rail line in this case.

Glen L. Bower

V. M. Speakman, Jr.
(Dissenting opinion attached)

Jerome F. Kever

CCCook:SABartholow:MCLitt:mcl:ik
C. 1046-95
PRI.COV

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Information regarding PRI was provided by Fred L. Krebs, General Manager of San Joaquin Valley Railroad Company. According to Mr. Krebs, PRI operates trackage which is leased from Southern Pacific Transportation Company. Mr. Krebs also advised that PRI has no employees and all services are performed by San Joaquin Valley Railroad Company, which reports the creditable compensation of the employees involved (B.A. Number 3780).

In Interstate Commerce Commission Finance Docket 32457, PRI filed a notice of exemption to lease and operate approximately 107 miles of rail line in California owned by Southern Pacific, providing services to former customers of Southern Pacific. As mentioned above, PRI has no employees or equipment and contracts with the San Joaquin Valley Railroad Company to provide service.

Section 1(a)(1)(i) of the Railroad Retirement Act and sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act define the term "employer" to include a carrier by railroad subject to the jurisdiction of the Interstate Commerce Commission. See 45 U.S.C. §§ 231(a)(1)(i), 351(a) and 351(b).

The evidence clearly supports a conclusion that PRI is a rail carrier employer. In the Notices of Exemption which the Interstate Commerce Commission issued April 7, 1994, ICC Finance Docket 32458, regarding continued control by Kyle Railways, Inc., and March 7, 1994, ICC Finance Docket 32457, PRI is responsible for the conduct of rail service over the line. The fact that PRI has no employees, but rather contracts with a carrier that provides employees to conduct operations, does not mean that PRI is not an employer under the Acts. It is its status as a carrier subject to ICC jurisdiction that renders it a covered employer. See Board Coverage Decision 94-112.

Accordingly, the Board holds that PRI is a covered employer under the Acts effective March 13, 1994, the date operations began.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever

CCCook:SABartholow:MCLitt:mcl:ik
C. 1046-95 PRI.COV

TO: Chief Financial Officer

FROM: General Counsel

SUBJECT: Employer Status
Port Railroads, Inc.

This is in response to your submission of October 14, 1994, regarding the employer status of Port Railroads, Inc. (PRI).

The information provided indicates that PRI operates approximately 107 miles of railroad trackage which is leased from Southern Pacific providing service to former Southern Pacific customers, that the operations are performed by the San Joaquin Valley Railroad Company, which is part of Southern Pacific, that PRI "places orders for customers and provides outbound billing," and that PRI has no employees.

The information indicates that PRI itself performs certain services; however, it is not clear how it can do so without any employees of its own. In addition, are the employees of San Joaquin Valley Railroad Company performing services for PRI being reported by Southern Pacific, with which San Joaquin is associated? Finally, this is a somewhat confusing operational situation in that PRI leases track from Southern Pacific and then contracts with a unit of Southern Pacific, i.e. San Joaquin Valley Railroad Company, to operate over the leased line. Is this, in fact, an accurate description?

Catherine C. Cook

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PRI is a class III carrier which operates approximately 107 miles of railroad trackage under a lease agreement with the Southern Pacific Transportation Company. PRI has no employees and all work for PRI is performed by the San Joaquin Valley Railroad Company. The San Joaquin Valley Railroad Company, formerly a railroad employer covered under the Acts, is now part of Southern Pacific. The line interchanges with a line owned and operated by the San Joaquin Valley Railroad Company and PRI interchanges rail cars with the Southern Pacific. PRI commenced operations on March 13, 1994.

Based upon the information summarized above, it is determined that PRI became a rail carrier employer under the RRA and the RUIA effective March 13, 1994.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever

CCCook:SABartholow:MCLitt:mcl:ik
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The employees in question would be reported as employees of Southern Pacific.

TO : The Board

FROM : Catherine C. Cook
General Counsel

SUBJECT: Port Railroads, Inc.

Pursuant to the memorandum from Secretary to the Board dated October 30, 1995, please find attached a proposed decision holding the above entity not to be an employer under the RRA and the RUIA.

Attachment